



CHEMICAL PRODUCT DEVELOPMENT
AND DEFENSE

MEMORANDUM

Via E-Mail

DATE: December 2, 2009

TO: Clients and Friends

FROM: The Acta Group, L.L.C.

RE: Senate Committee and Subcommittee Hold Oversight Hearing on TSCA

Today the full Senate Committee on Environment and Public Works and Subcommittee on Superfund, Toxics and Environmental Health held a joint hearing entitled “Oversight Hearing on the Federal Toxic Substances Control Act.” During the hearing, Senator Frank R. Lautenberg (D-NJ), Chair of the Subcommittee, stated that he is preparing legislation to reform the Toxic Substances Control Act (TSCA). In 2005 and 2008, Lautenberg introduced the Kid-Safe Chemicals Act, which would require chemical companies to prove that their products are safe before being placed on the market. Senator Barbara Boxer (D-CA), Chair of the Committee, stated that she does not believe that TSCA sufficiently protects pregnant women and children, “applauded” Lautenberg for his commitment to TSCA reform. According to Boxer, TSCA reform is “at the top” of her agenda.

The most unexpected element of today’s TSCA hearing was how little time the members actually spent speaking to the official subject of the hearing. Controversies over the recently leaked e-mails between some leading climate change researchers set off continued discussion of the climate research issue. Of particular concern to Republican members is whether any of the information used by the U.S. Environmental Protection Agency (EPA) in formulating its current positions on climate is somehow tainted by the recent disclosures. Democrat members questioned the relevance of the disclosures to any current EPA proposals or findings, citing numerous other researchers and research organizations that reached similar conclusions. Administrator Lisa Jackson was left at a disadvantage in that EPA has yet to review the disclosed material and as a result, as she stated repeatedly, no one currently knows whether

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any of the released information has a role in EPA's conclusions or was any part of EPA-sponsored research. That left the Committee and Subcommittee little time to discuss TSCA, and as a result, there were relatively few, and relatively perfunctory, questions raised to the witnesses about chemical legislation. It also seemed to truncate the time which otherwise would have been allotted for the testimony and questioning of the United States Government Accountability Office (GAO) and National Institute of Environmental Health Sciences (NIEHS) witnesses.

Ironically, the continued contentious debate about climate change may have an ultimately positive impact on TSCA legislation. If Congress finds itself in a futile quagmire on the climate issue next year, there may be more momentum to move other legislative priorities that may be resolvable, such as TSCA. This is not to say the outstanding issues are easily resolved, but both sides of the aisle noted the stated goals of both the chemical industry and environmental advocates to move some kind of amendment package forward to address the now standard criticisms of the current law.

Witnesses included:

- Lisa Jackson, Administrator, United States Environmental Protection Agency (EPA);
- John Stephenson, Director, Natural Resources and Environment, GAO; and
- Linda Birnbaum Ph.D., Director, NIEHS and the National Toxicology Program (NTP).

The witness statements are available on the Internet at http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=129f8be4-802a-23ad-4217-c8c5900bf3db.

Jackson highlighted the Obama Administration's principles for TSCA reform:

- Chemicals should be reviewed against safety standards that are based on sound science and reflect risk-based criteria protective of human health and the environment;
- The responsibility for providing adequate health and safety information should rest on industry;



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- EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into account a range of considerations, including children's health, economic costs, social benefits, and equity concerns. EPA and industry must include special consideration for exposures and effects on groups with higher vulnerabilities -- particularly children;
- EPA should have clear authority to set priorities for conducting safety reviews;
- We must encourage innovation in green chemistry, and support research, education, recognition, and other strategies that will lead us down the road to safer and more sustainable chemicals and processes; and
- Implementation of the law should be adequately and consistently funded, to meet the goal of assuring the safety of chemicals, and to maintain public confidence that EPA is meeting that goal.

Stephenson's prepared testimony is available as a GAO report entitled "Chemical Regulation: Observations on Improving the Toxic Substances Control Act,"¹ and addresses EPA's implementation of TSCA and the Integrated Risk Information System (IRIS) and options for (1) obtaining more information on chemical risks; (2) controlling these risks; and (3) sharing more of the information collected under TSCA. In 2008, GAO issued a report criticizing IRIS. Since then, EPA has announced revisions to the IRIS assessment process, most recently in May 2009. According to the prepared testimony, these revisions would address GAO's recommendations and provide a sound framework for conducting IRIS assessments. Stephenson also briefly touched on the issue of confidential business information (CBI), and suggested that Congress amend TSCA to authorize EPA to share CBI with states.

Birnbaum provided a brief summary of environmental health science developments since TSCA was passed in 1976. Research indicates that fetal, infant, and child developmental processes are more vulnerable to disruption from relatively low doses of certain chemicals, and this concept applies to endocrine disrupting chemicals. Birnbaum reported that NIEHS is supporting research on the developmental origins of obesity and the theory that environmental exposures during development play an important role in the current epidemic of

¹ http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=619c34a0-842b-494d-8579-f5051a0a709a.



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obesity, diabetes, and metabolic syndrome. Other issues include exposure to mixtures of substances, and differences in the routes of exposure. According to Birnbaum, NTP is laying the foundation for a new toxicological testing paradigm in partnership with the National Human Genome Research Institute and EPA. They are using quantitative high throughput screening assays to test a large number of chemicals, and are depositing the resulting data into publicly accessible relational databases. Birnbaum testified that analyses of these results “will set the stage for a new framework for toxicity testing.”

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We hope this information is helpful. As always, please call if you have any questions.